

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF SOUTH CAROLINA  
ANDERSON DIVISION

Gene Autry James, )  
Plaintiff, )  
vs. )  
Spartanburg County Jail; Larry W. )  
Powers, Director of Medical )  
Department; and Medical Department, )  
Defendants. )

Civil Action No. 8:05-0168-CMC-BHH

**REPORT OF MAGISTRATE JUDGE**

The plaintiff, an inmate at the Spartanburg County Detention Center who is proceeding *pro se*, seeks relief pursuant to Title 42, United States Code, Section 1983. This matter is before the court on a motion to dismiss or, in the alternative, to consolidate.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

The plaintiff filed a complaint in federal court on October 25, 2004, in case number 8:04-22499-CMC-BHH, in which he alleged deliberate indifference to a serious medical need on particular dates in April, May, June, July, and September 2004. On January 27, 2005, the plaintiff filed a complaint in the instant action, raising identical claims against the same parties as contained in the prior complaint, except that this complaint makes reference to two new alleged occurrences of deliberate indifference to his medical needs in November and December 2004.

On February 28, 2005, the defendants filed a motion to dismiss or, in the alternative, to consolidate in the instant action. By order filed April 29, 2005, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4<sup>th</sup> Cir. 1975), the plaintiff was advised of the summary judgment dismissal procedure and the possible consequences if he failed to adequately respond to the motion. The plaintiff filed a response to the motion on May 20, 2005. Also on May 20, 2005, the plaintiff filed motions for appointment of counsel, to obtain medical records, and for judgment on the pleadings.

As noted by the defendants, rather than filing a new complaint, the plaintiff should have moved to supplement his complaint in the original action pursuant to Federal Rule of Civil Procedure 15(d) with regard to the occurrences that have happened since the date of his original pleading. As these cases involve common questions of law and facts, and in the interest of fairness to the parties and judicial economy, this court recommends that the instant action be dismissed and that the additional allegations contained in the complaint in this action be addressed in the original action, 8:04-22499-CMC-BHH.

The plaintiff's motion for appointment of counsel is denied by order filed simultaneously herewith. All pending nondispositive motions are held in abeyance pending the district judge's disposition of the motion for summary judgment. Should the district judge adopt this court's recommendation, these motions will be rendered moot.

IT IS SO RECOMMENDED.

s/Bruce H. Hendricks  
United States Magistrate Judge

July 20, 2005

Greenville, South Carolina